



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 8, 1998

Ms. Nancy Barbour
Staff Attorney
Legal and Compliance, MC 110-A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0082

Dear Ms. Barbour:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110693.

The Texas Department of Insurance (the "department") received two requests for information concerning responses made by USAA Homeowners and Property Pricing Actuary ("USAA") and State Farm Insurance ("State Farm") regarding a department call for foundation loss information.¹ You claim that the requested information is excepted from disclosure under section 552.110 of the Government Code. In addition, because you also assert that the privacy or property interest of third parties may be implicated by these requests, you raise section 552.305 of the Government Code. We have considered the exceptions you claim and have reviewed the documents you submitted.

Pursuant to section 552.305 of the Government Code, this office notified USAA and State Farm of the requests. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Both USAA and State Farm responded to the notices, asserting that the requested records they provided to the department are excepted from required public disclosure based on section 552.110 of the Government Code.

¹As you do not comment on the information requested regarding the calls made by the department, we assume that this information has been provided to the requestor. See Open Records Decision No. 363 (1983).

Section 552.110 excepts from disclosure trade secrets or commercial or financial information obtained from a person and confidential by statute or judicial decision. The department and the two companies argue that the information at issue is protected under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office established that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). You argue that the requested information must be withheld under *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993). In *Critical Mass* the court found that commercial and financial information that is voluntarily submitted to the government must be withheld if it is of a kind that the provider would not customarily make available to the public. *Id.*

The department has informed this office that the information at issue here was voluntarily submitted in response to a telephone inquiry and not pursuant to either article 1.24 or article 5.131 of the Insurance Code, or in response to a subpoena. USAA and State Farm argue that the water loss experience data at issue is confidential and is not provided to the public. State Farm additionally argues that it would not have provided the department with the requested information if it were to be released to the public.

After reviewing the arguments of the department, USAA, and State Farm, we conclude that the information at issue was voluntarily submitted by the two companies to the department, and that this information is not of the kind customarily released to the public. Therefore, the department must withhold the requested information under section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 110693

Enclosures: Submitted documents

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